IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL STAMP NO.3461 OF 2007

Nathu Tulasiram Gabhale
Sau Jijabai Nathu Gabhale ...Appellants

vs.

Union of India
United India Insurance Company ...Respondents

Mr.M.R.Lad for the Appellants
Ms Poornima Advani with Mr.Ravindra A.Lokhande i/b M/s.The Law Point
Ms Sneha Dwivedi for Respondent No.2.

CORAM: A.S.OKA,J.
DATE : OCTOBER 18, 2007.

P.C.:

1. I have heard the learned counsel for the parties. By impugned Judgment and Order passed by the Railway Claims Tribunal, Mumbai on 20th October 2004, a claim for compensation made by the Appellants under section 124-A of the Railways Act,1989 (hereinafter referred to as the said Act of 1989) has been dismissed. The claim has been dismissed on the ground that the Appellants who are paternal grandparents of the deceased who was a 7 years old boy are not dependants within the meaning of clause (b) of section 123 of the said Act of 1989.

2. The learned counsel for the Appellants submitted that the Railway recovers insurance premium from every passenger and in that sense every passenger is insured. He submitted that in view of the agreement of insurance, the Railway is bound to

compensate the Appellants on account of death of the deceased and the Railway can recover the compensation amount on the basis of insurance from the insurance company. He submitted that in any event, the appellants will have to be treated as dependents. The learned counsel for the first Respondent submitted that the Tribunal has rightly rejected the claim on the ground that the Appellants are not the dependants. She placed reliance on the decision of the Apex Court in case of State of M. P. and others Vs. M.P.Ojha and another [(1998) 2 S.C.C. page 554]. She also relied upon the dictionary meaning of the word ‘Dependant’.

3. Perusal of the claim petition filed by the Appellant shows that the same was made by invoking section 124(A) of the said Act of 1989. A claim for compensation under section 124 (A) can be made when in the course of working of a railway an untoward incident occurs. Section 124A provides that a dependant of a passenger who has been killed in an "Untoward incident" can maintain an action and recover damages. Clause (b) of the said section 123 defines the word ‘dependant’. Clause (b) provides that the following persons are the dependents :-

i) the wife, husband, son and daughter and in case the deceased passenger is unmarried or is a minor, his parent;

ii) the parent, minor brother or unmarried sister, widowed sister, widowed daughter-in-law and a minor child of a pre-deceased son, if dependant wholly or partly on the deceased passenger;

iii) a minor child of a pre-deceased daughter, if wholly dependent on the deceased passenger;

iv) the paternal grandparent wholly dependent on the deceased passenger

Perusal of clause (b) shows that in case of wife, husband, son and daughter of the deceased or in case of parents of the deceased the person concerned becomes dependant irrespective of the fact whether the person is actually and wholly dependent on the deceased passenger. In the clause (iii) and (iv), the legislature has chosen to use the words 'wholly dependant'. Thus, the paternal grandparents can be terms as dependants only if they are wholly dependant on the deceased passenger.

4. Reliance has been placed by the learned counsel for the first Respondent on the decision of the Apex Court in case of State of M.P. and others (supra) in the context of the M.P. Civil Services (Medical Attendance) Rules 1958. In paragraph

13, the Apex Court has held thus :

"13. The expression "wholly dependent" is not a term of art. It has to be given its due meaning with reference to the Rules in which it appears. We need not make any attempt to define the expression "wholly dependent" to be applicable to all cases in all circumstances. We also need not look into other provisions of law where such expression is defined. That would be likely to lead to results which the relevant rules would not have contemplated. The expression "wholly dependent" has to be understood in the context in which it is used keeping in view the object of the particular rules where it is contained. We cannot curtail the meaning of "wholly dependent" by reading into this the definition as given in SR 8 [sic SR 2(8)] which has been reproduced above. Further, the expression "wholly dependent" as appearing in the definition of family as given in Medical Rules cannot be confined to mere financial dependence. Ordinarily dependence means financial dependence but for a member of a family it would mean other support, may be physical, as well. To be "wholly dependent" would therefore include both financial and physical dependence. If support required is physical and a member of the family is otherwise financially sound he may not

necessarily be wholly dependent..."

5. In the present case, the age of the deceased was only 7 years at the time when he died as a result of an untoward incident. By no stretch of imagination the Appellants were fully dependants whether financially or physically on the deceased. In view of what is held by the Apex Court, the Tribunal was well within its powers to reject the claim of the Appellants by holding that the Appellants were not dependants within the meaning of aforesaid clause (b) of section 123. The claim of the Appellants was specifically under section 124 A of the said Act of 1989 which could have been maintained only by a dependant within the meaning of the said statute. Moreover, the claim under section 124-A of the said Act of 1989 is not based on alleged insurance. Therefore, the submission made by the learned counsel for the Appellants cannot be accepted. Hence, there is no merit in the Appeal and the same is summarily dismissed.

JUDGE